

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY MASON COUNTY TO
HOWARD HOLBROOK,

HOWARD HOLBROOK,

Appellant,

v.

MASON COUNTY,

Respondent,

VERNON & JEAN JONES,
EDWIN & MARYJEAN WEST, and
THE COMMITTEE OPPOSING
SANDY'S RESORT,

Respondent-Intervenors.

SHB No. 83-12

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of the denial of a shoreline
substantial development permit by Mason County to Howard Holbrook,
came on for hearing before the Shorelines Hearings Board, David Akana,
Rodney M. Kerslake, Nancy R. Burnett, Lawrence J. Faulk and A. M.

O'Meara, members, convened at Lacey, Washington on July 22 and 25, 1983. Administrative Law Judge William A. Harrison presided.

Appellant appeared by his attorney, Ross Radley. Respondent Mason County appeared by John H. Buckwalter, Deputy Prosecuting Attorney. Respondent-intervenors appeared by their attorney, Patricia T. Lantz. Reporters Nancy J. Swenson and Bibi Carter recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

This matter arises on the north shore of the Hood Canal west of Tahuya in Mason County. Appellant, Howard Holbrook, owns Sandy's Resort is located there. The resort presently includes a caretaker's residence, 24 trailer sites, restrooms, a laundromat, a boathouse, a marine railway, a concrete boat launching ramp and moorage floats.

II

In November, 1981, Mr. Holbrook applied to Mason County for a shoreline substantial development permit. The proposed development consists of adding 4 finger floats (6' x 81'), enlarging an existing float by 25 feet, removing one small float, driving 11 new piling and removing 3 old piling. This would increase the amount of moorage available at Sandy's Resort. There would be a resulting need for toilet facilities, water supply and parking.¹

1. The Port of Tahuya wishes to establish a public fishing pier. It has considered obtaining a public easement over the proposed floats and placing an artificial fishing reef in the water. This would

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III

The moorage would only occur during the summer season of May to October. During other months of the year, both the present and proposed floats would be removed from the water because of inclement weather.

IV

The present and proposed moorage would be used predominantly by local residents, including those occupying the on-site trailers. Thus, the need for toilet and washing facilities would be less than if this were a boating destination for persons away from home. The Mason County Health Department approved the proposal using Environmental Health Guidelines for Marina Development and Operation developed by the state Department of Social and Health Services. In doing so it applied the rules for a "permanent" rather than a "transitory" moorage. The existing septic system will not support both the existing and proposed moorage facilities. The Mason County Health Department therefore authorized the use of sealed vault privies as permitted by the state Guidelines. It further required the closure of some existing toilet facilities and the laundromat to ensure that the septic system would not be over-used. The site will not accommodate a new or expanded septic drainfield adequate for this proposal.

1. Cont.

probably require a separate shoreline substantial development permit. Mr. Holbrook proposes to expand his floats independently of the Port's decision on the public fishing pier.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
SHB No. 83-12

V

The water supply system to the site has not been approved by the state for this proposal. It is the uncontroverted testimony of Mr. Holbrook's agent who sought such approval that the state Department of Social and Health Services, the responsible agency, required final action on this shoreline application, now before us, prior to commencing its review of the water supply system.

VI

The typical boat using Sandy's Resort is about 17 feet long and powered by an outboard motor. The proposal would result in negligible water pollution from gasoline with proper operation of such boats in numbers corresponding to the enlarged dock space. The state Department of Ecology has reviewed the proposal relative to sewage discharge from such boats, and has not required a sewage pump out station. It has recommended posting notices prohibiting sewage discharge from boats. This is an adequate precaution on the facts of this case. The Resort's moorage is not in a shallow water embayment which would inhibit the flushing action of the tide. The proposal should not result in significant water pollution.

VII

The county highway runs close to the shore of the Hood Canal and splits Sandy's Resort into two parcels. The caretakers residence, boathouse and 11 trailers occupy the smaller, waterward parcel. These existing structures leave the absolute minimum space necessary to maneuver a car and boat-trailer to the launching ramp in such a way as

1 to exit the highway while moving forward, turn around, launch and
2 re-enter the highway moving forward. Were parking allowed waterward
3 of the highway as proposed, it would be necessary to back off the
4 highway (in a right angle turn) into the launching area. This and the
5 proposed parking which leads to it would be unsafe to all concerned.

6 VIII

7 The proposal's parking plan further provides 14 parking spaces at
8 right angles adjacent to the highway on the upland side. These exist
9 now, and often require backing onto the highway with little or no view
10 of oncoming traffic until the vehicle backing out is on the highway.
11 This parking is unsafe for all concerned.²

12 IX

13 The Mason County parking standards require a minimum of 49
14 off-street parking spaces for the Resort, as expanded by this proposed
15 development. The application's parking plan showed 52 spaces.
16 Elimination of the unsafe spaces waterward of the highway would reduce
17 the total by 9 spaces; elimination of the unsafe spaces adjacent to
18 the highway would further reduce the total by 14 spaces for a
19 deficiency of 23 spaces under the parking standards.

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22 2. We note that in processing this application, the Mason County
23 Building Official did not forward the parking plan to the County
24 Engineer for safety review as required by Section 10.03 of the Mason
25 County parking standards. In testimony before us, the County Engineer
26 objected to use of the 14 parking spaces. Had this ordinance been
27 followed, the applicant may have been able to modify his proposal to
address this safety problem before matters advanced to the present
request for review.

1 X

2 After entering a declaration of non-significance under the State
3 Environmental Policy Act, 43.21C RCW, Mason County denied the
4 shoreline application of Mr. Holbrook on January 31, 1983. From this,
5 Mr. Holbrook requests review. The request for review was filed March
6 3, 1983.

7 XI

8 Any Conclusion of Law which should be deemed a Finding of Fact is
9 hereby adopted as such.

10 From these Findings the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 The Mason County declaration of non-significance under SEPA is not
14 clearly erroneous. The proposed development is not inconsistent with
15 the policy of SEPA, chapter 43.21C RCW.

16 II

17 The site in question is designated "Urban" by the Mason County
18 Shoreline Master Program (MCSMP). The proposal, to expand a marina,
19 is a water dependent use permitted outright in the urban environment.
20 MCSMP Section 16.040(8)(a).

21 III

22 The proposal is governed by Section 16.040, Commercial
23 Development, and Section 16.050, Marinas, of the MCSMP.

24 IV

25 This proposal is consistent with the provisions of Section 16.040
26 of the MCSMP stating:

1 .16.040 Commercial Development

2 A. Urban Environment. Shorelines suitable for urban
3 uses are a limited resource. Therefore, emphasis
4 shall be given to development within already
5 developed areas, and particularly to water dependent
6 industries and commercial uses requiring frontage on
7 navigable waters.

8 Redevelopment in mixed areas¹ should be actively
9 promoted, so as to concentrate commercial development
10 into one area and reduce the overlapping of
11 commercial development into residential areas.

12 1. Mixed development are areas that have both
13 residential and commercial development.

14 V

15 Sewage. Environmental Health Guidelines for Marine Development
16 and Operation developed by the state Department of Social and Health
17 Services require only the proposed toilet facilities for "permanent"
18 moorage which is the category applied by the Mason County Health
19 Department and the appropriate category for this proposal. Sealed
20 vault privies are expressly allowed by the Guidelines where, as here,
21 there are severe sewage disposal limitations. On the record made in
22 this case, the proposal apparently meets the state Guidelines and is
23 consistent with Section 16.040(3) of the MCSNP requiring compliance
24 with health regulations, so far as sewage disposal is concerned.

25 VI

26 Water Supply. The proposed development should not be approved
27 without necessary state approval of the water supply. The lack of
such approval alone is not a basis for denying a shoreline substantial
development permit if it is a required antecedent to state approval of
the water supply. The deficiencies in the water supply, if any, would

1 then never be known, nor the action which would correct those
2 deficiencies. The appropriate action would be to condition the
3 shoreline permit to require any necessary state approval of the water
4 supply before construction may commence. This would be consistent
5 with Section 16.040 of the MCSMP requiring compliance with health
6 regulations.

7 VII

8 Water Pollution. The proposed development is consistent with
9 MCSMP Section 16.050(A)(2) dealing with fuel handling; and, also with
10 Section 16.050(A)(3) in that it does not concern a shallow water
11 embayment. It was reviewed by the state Department of Ecology
12 regarding sewage discharge from boats and found not to require a
13 sewage pump out station. On the record made in this case, the
14 proposed development is consistent with Section 16.040(3) of the MCSMP
15 requiring compliance with health regulations so far as sewage
16 discharge from boats is concerned.

17 VII

18 Parking. The MCSMP provides, at Section 16.040(2) and (4):

19 (2) Parking and loading shall be placed upland away
20 from the water whenever feasible.

21 (4) Public safety should be considered in any new
22 commercial development.

23 Parking, as proposed, waterward of the highway is inconsistent
24 with these provisions of the MCSMP. Moreover, parking in the 14
25 spaces adjacent to the highway is inconsistent with the public safety
26 requirement of Section 16.040(4). Although the MCSMP does not

1 incorporate by reference the minimum spaces requirement of the Mason
2 County parking standards, we look to it for reference in interpreting
3 the public safety provision of Section 16.040(4) of the MCSMP.
4 Because the remaining parking spaces are fewer than the minimum
5 required by the parking standards, this also is unsafe in that it
6 encourages use of unauthorized parking in unpredictable places along
7 the highway. The applicant's proposed parking plan now before us is
8 inconsistent with Section 16.040(4) of the MCSMP.

9 VIII

10 Appellant, Mr. Holbrook, may re-apply for a substantial
11 development permit with a revised parking plan eliminating the 23
12 unsafe spaces specified herein, and meeting the minimum number of
13 off-street parking spaces required by the parking ordinance.

14 IX

15 Aside from the parking issue, the other issues raised in this
16 request for review do not justify denial of the appellant's
17 application for this proposed shoreline development.

18 X

19 Any Finding of Fact which should be deemed a Conclusion of Law is
20 hereby adopted as such.

21 From these Conclusions the Board enters this
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ORDER

The denial by Mason County of a shoreline substantial development permit in this matter is affirmed.

DATED this 30th day of September, 1983.

SHORELINES HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Rodney M. Kerslake

RODNEY M. KERSLAKE, Member

Nancy R. Burnett

NANCY R. BURNETT, Member

Lawrence J. Faulk

LAWRENCE J. FAULK, Member

A. M. O'Meara

A. M. O'MEARA, Member

William A. Harrison

WILLIAM A. HARRISON
Administrative Law Judge

Medley v. King County, SHB No 83-14 (1983)

1983

SHB No 83-14

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
MEDLEY, Appellant v. KING COUNTY, Respondent

This matter, a request for review of a partial approval of a substantial development permit for a moorage structure on Vashon Island, came on for hearing in Tacoma on August 16, 1983, before the Board, Dennis Derickson, Beryl Robison, Nancy Burnett, Larry Faulk, and Gayle Rothrock (presiding). The proceedings were officially reported by Nancy A. Miller.

Appellants were represented by John E. Keegan, Attorney. Respondent was represented by Phyllis MacLeod, deputy prosecuting attorney.

Witnesses were sworn and testified. Exhibits were admitted and examined. Oral and written argument was received at the hearing and through briefs.

From this the Board makes these

FINDINGS OF FACT

I

Appellants Medley and Pierce are relatives and homeowner neighbors on lots 2 and 3 in the Magnolia Beach addition of Vashon Island on Quartermaster Harbor. Each lot has a house, a garage, a continuous bulkhead and sidewalk. Appellant Medley's home also has a patio and second-story deck. The shoreline and harbor areas are shorelines of statewide significance, and are designated as lying within a conservancy environment under terms of the Shoreline Management Act and the King County Shorelines Master Program.

II

The shoreside residential strip on the west side of Quartermaster Harbor is largely bulkheaded, and the properties are set against a backdrop of relatively steep slopes. There are a few piers and docks and remnants of old piers protruding from the west shore along the four mile strip between Burton Heights and the Vashon-Talequah ferry dock. The nearest pier is 3,000 feet to the south of lot 2. Also visible are four aged pilings 75 feet to the north of the subject property. The character of the area is rural beachfront residential.

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III

Appellants' existing 23 foot x 32 foot overwater structure extends from the sidewalk next to the bulkhead out over the tidelands and water on piles, beyond the ordinary high water mark. It has a three-step entrance, planter boxes, benches, and railings around its waterward perimeter and is built over and beyond a triangular wing-wall. It was constructed in 1981 without benefit of a permit from King County.

IV

Upon discovering that the subject overwater structure existed, an official of King County observed and photographed the circumstance and advised Medley by note to contact the Building and Land Development Division (BALD) at King County before doing any additional work on the structure.

Appellant Medley was advised that a shoreline substantial development permit was necessary for both the existing structure and for any future shoreline development. Appellant applied for an after-the-fact substantial development permit and a variance.

for a "deck" on June 25, 1981, to legitimize the over-the-water structure. In late October, 1981, King County BALD denied the application because the applicant failed to identify any hardship precluding a reasonable use of the property and the structure violated the goals and policies of the KCSMP relating to residential over-the-water development and uses in a conservancy environment. King County further decided a variance would be a grant of special privilege and the public interest would suffer by establishing a precedent allowing decks to be built over the water in Puget Sound. King County subsequently ordered the structure removed. Appellant did not remove the structure.

V

In early November of 1982, appellant Medley applied for another substantial development permit for construction of a joint pier with his neighbor, Pierce. Appellant proposed to add a 57-foot long by 14-foot wide finger pier to the existing over-the-water structure. This proposed addition would have the total structure extend 80 feet waterward, with a total surface area of 954 square feet. Up to 1,200 square feet may be permitted in a joint use pier. King County BALD partially approved the permit on February 9, 1983, to allow a joint-use pier not to exceed 6 feet in width and 80 feet in length. The county found this configuration to allow the least intrusion on the conservancy environment while allowing moorage. This decision also required appellants to remove

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that part of the existing deck wider than 6 feet because residential development (which includes decks) waterward of the OHWM is prohibited by the KCSMP.

Appellants' challenge King County's authority to limit bulk and dimensional requirements of joint-use piers in requiring removal of part of the decking and limiting the square footage of a joint-use pier as a condition of their permit.

VI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Substantial development permits are tested for consistency with the local master program and the provisions of the Shoreline Management Act (SMA) RCW 90 58 140 2(b). The burden of proof in an appeal falls upon the person(s) challenging a local government's decision on such a permit. RCW 90 58 140(7).

II

The Shorelines Hearings Board reviews permit decisions of local government de novo determining whether the decision was erroneous, in light of the evidence presented. WAC 461-08-174 and -175. This is the Board's pertinent standard of review, not whether the local government decision had a "rational basis" as contended by the appellant.

III

Appellants contend their proposed development is a "dock or pier" and that as such, it should be governed only by those KCSMP provisions. The King County Code (KCC) at 25 08 370 defines a pier or dock as a

structure built in or over or floating upon the water extending from the shore, which may be used as a landing place for marine transport or for air or water craft or recreational activities.

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Appellants' proposed addition fulfills the codified master program simple definition of a dock. However, the existing portion of appellants' development, for which they also seek a

permit, is not a dock or pier. The existing structure extends from the narrow walkway in front of the residence over the shoreline setback area and over the water. It is a sundeck which was and is directly associated with the residence. Structures which are part of the residence and common to such are residential structures. *Madden v. Pierce County and Greenly*, SHB No. 240 and SHB No. 80-30, and are governed by provisions applicable to such, not by the provisions relating to "docks" or "piers." *Manette Peninsula Assn. v. City of Bremerton*, SHB No. 237. The KCSMP prohibits certain development waterward of the ordinary high water mark (OHWM). "Residential development shall not be permitted waterward of the ordinary high water mark." K.C.C. 25.24.030(A). And, according to the Residential Element policies of the Master Program (not codified):

2. Residential developments should have minimal impact on the land and water environment of the shoreline and minimize visual and physical obstruction.

Policy 2 - Residential development on piers or over water should not be permitted.

Appellants seek to legitimize their existing over-the-water deck by calling it part of their proposed pier. In their proposal to attach a finger pier to the existing deck, they seek to apply the KCSMP provisions which regulate the dimensions of "docks" and "piers" to their deck. Because their sundeck and proposed pier together would fall within the maximum surface area allowed for a dock under the KCSMP, appellants wrongfully reason that their sundeck is a permitted structure.

IV

Appellants contend that because their proposed dock meets the area dimensions for piers and docks and is a joint-use dock in a residential area, which is preferred over single-family docks by the KCSMP, that King County must approve their whole proposal. Under "Residential Development" the Shorelines Master Program reads at KCC 25.16.140:

Any pier, moorage, or float or launching facility authorized by this section shall be subject to the following conditions:

- 4 -

(c) No pier, moorage, float, or overwater structure or device shall be located closer than 15 feet from the side property line extended except that such structures may abut property lines for the common use of adjacent property owners when mutually agreed to by the property owners in a contract recorded with the King County Department of Records and Elections, a copy of which must accompany an application for a building permit or a shoreline permit, such joint use piers "may be permitted" up to twice the surface area allowed by this Title. (emphasis added)

Local government has both the power and the discretion to grant or deny shoreline permits. RCW 90.58.140. As a general rule, the word "may," when used in a statute, is permissive only and operates to confer discretion on the governing body. *Spokane County ex rel. Sullivan v. Glover*, 2 Wn.2d 162, 97 P.2d 629 (1940). There is no language mandating the county to approve joint piers simply because they are preferred or because they meet dimensional requirements.

"The test for reasonableness of the conditions imposed by the city for a permit is whether the conditions further the policy of the SMA or aid in the implementation of the master program." *Green v. City of Bremerton*, SHB No. 81-37. Because the appellants' proposal conforms with some preferred uses and area requirements, the county is not precluded from considering other policies, and exercising judgment based on those policies, in its decision. The KCSMP at K.C.C. Chapter 25.040.030(c) states the following:

Development proposed on property adjacent to water bodies on wetlands under the jurisdiction of the Shoreline Management Act shall be evaluated in terms of the Goals, Policies, and Objectives of the Master Program

The County's limitation upon the dimensions of the appellants' proposed pier is reasonable in light of the conservancy designation of the area. Appellants have not shown otherwise. "Conservancy areas are intended to maintain their existing character. This designation is designed to protect, conserve, and manage existing natural resources." K C C 25 24 010. In the area close to appellants' homes there is only one other pier and no other waterward residential developments. The County's elimination of the deck from the

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proposal minimizes the impact of the pier on the area while still allowing for the appellant's expressed moorage needs. /1

V

Elimination of the deck prevents piecemeal development, a primary objective of the SMA. "There is a clear and urgent demand to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." RCW 90 58 020. To allow appellants' deck to remain would establish a precedent of waterward construction past the OHWM for an otherwise unauthorized structure under the KCSMP. Additional requests for over-the-water development from neighboring landowners could result in cumulative intrusive development along the shoreline.

VI

In the instant case, the County's limitation of the surface area of the proposed dock is based both upon the policies of the SMA and goals, policies and objectives of the master program. The originally proposed substantial development, being inconsistent with the KCSMP, is also inconsistent with the Shoreline Management Act, and should not be approved in full. King County's permit action should be affirmed.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this:

1. A variance request accompanied the first permit application for a deck, but not the second one now under appeal to the Board. Under WAC 173-14-150, a variance cannot be a grant of special privilege not enjoyed by other property owners in the area, e.g., extra deck space or a boat hoist and pull-out platform. A variance is not authorized to be issued to accommodate the most desired use of property because personal hardship or inconvenience would otherwise result. It must be shown that without the variance there would not be a reasonable use of the property.

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ORDER

King County's action (approval in part and denial in part of the substantial development permit application) is affirmed.

DATED this 18th day of November, 1983

Medley v King County, SHB No. 83-14 (1983)

1983

SHB No 83-14
FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
(Dissenting Opinion)

IN THE MATTER OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
APPROVED IN PART BY KING COUNTY,

DON MEDLEY, JR., and ROBERT H PIERCE, Appellants, v
KING COUNTY, Respondent

This matter, the request for review of a shoreline substantial development permit for a moorage structure on Vashon Island came on for hearing in Tacoma on August 16, 1983, before the Shorelines Hearings Board, Gayle Rothrock, Chairman, (presiding), Lawrence J Faulk, Beryl Robison, Nancy R Burnett and Dennis Erickson, Board members

Appellants were represented by John E Keenan, attorney
Respondent was represented by Phyllis MacLeod, Deputy Prosecuting Attorney

- 1 -

Witnesses were sworn and testified Exhibits were admitted and examined Oral and written argument was received at the hearing and through briefs

From this the Board makes these

FINDINGS OF FACT

I

The appellants Donald Medley and Robert Pierce own adjoining residences on Vashon Island fronting on Quartermaster Harbor on Puget Sound The houses are situated on a portion of the shoreline that includes 12 to 15 other residences all separated from the water by a bulkhead

II

The area is classified shoreline conservancy environment by the King County Shoreline Master Program (KSCMP)

III

Prior to June of 1981 Mr Medley built a structure measuring 32 feet by 23 feet on the waterward side of his residence The entire area of this structure extends from the bulkhead over the tidelands and water of Quartermaster Harbor Mr. Medley constructed this structure without obtaining a building permit or a shoreline substantial development permit from King County After being notified by King County that a permit was required for such development, Mr Medley applied for a substantial development permit and variance for the structure on June 25, 1981. Testimony by Mr Colby of King County

- 2 -

indicated that the practice of applying for proper permits after the fact is a common practice in King County A decision on his application was reached on October 27, 1981, denying the variance and associated substantial development permit

IV

On November 4, 1982, the appellants applied for a substantial development permit for the construction of a joint use pier This application sought approval of the pre-existing deck with the addition of a larger pier measuring four feet by fifty-seven feet

extending outward from the deck. This design provided for a total surface area of 964 square feet and a total extension of 80 feet.

V

On February 9, 1983, a decision was reached by King County. The decision granted in part, the substantial development permit for a joint use pier. The decision allowed a joint use moorage pier not to exceed six feet in width and eighty feet in length. The deck portion of the development was to be removed.

VI

On March 7, 1983, appellants appealed the design to this Board.

VII

The questions to be decided by this Board are whether the 23'x32' structure built waterward of the bulkhead is a permitted use according to the KCSMP, and if it is how much of it can it be utilized in the design of appellants dock. If the Board decides it is not a permitted use, then the question becomes what should be done about this existing structure.

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VIII

Applicable sections of the King County Shoreline Master Program (KCSMP) are:

Section 409(4) (c) and (e) state:

(c) no pier, moorage, float, or overwater structure or device shall be located closer than 15 feet from the side property line extended except that such structures may abut property lines for the common use of adjacent property owners when mutually agreed to by the property owners in a contract recorded with the King County Department of Records and Elections, a copy of which must accompany an application for a building permit or a shoreline permit, such joint use piers may be permitted up to twice the surface area allowed by this title.

(e) no pier, including finger pier, moorage, float, or overwater structure or device shall be wider than fifty (50) percent of the lot with which it is associated.

Section 409 (6) (a) (d) and (e) state:

(6) Piers, moorages, floats and launching facilities may be permitted accessory to a single family residence, provided:

(a) "private, single residence piers for the sole use of the property owners shall not be considered an outright use on King County shorelines." A pier may be allowed when the applicant has demonstrated a need for moorage and that the following alternatives have been investigated and are not available or feasible.

(i) commercial or marina moorage.

(ii) floating moorage buoy.

(iii) joint use moorage pier.

(d) the maximum waterward intrusion of any portion of any pier shall be eighty feet, or the point where the water depth is 13 feet below the ordinary high water mark whichever is reached first.

(e) the total surface area of piers, moorages, floats and/or launching facilities, or any combination thereof, shall not exceed 600 square feet, provided that, no float shall have more than 150 square feet of surface area.

Emphasis added.

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Section 809(2) states:

(2) in granting or extending a permit, the director may

attach thereto such conditions, modifications and restrictions regarding the location, character and outside of the shoreline as he finds necessary to make the permit compatible with other features of the proposed development and related development and activity the criteria set forth in Sections 103 and 801 of this Title. Such conditions may include requirement to post a performance bond assuring compliance with permit requirements, terms and conditions

IX

The KCSMP, by permitting a single use pier only after an applicant has demonstrated that a joint use pier is not feasible establishes a preference for joint use piers over single use piers

X

The appellants own four boats and the application and permit before this Board is for a joint use pier.

XI

The area on either side of appellant's property for approximately one-half mile each way is heavily developed with homes along the beach

XII

Testimony indicated this application is only the third dock permit issued by King Co. Testimony and exhibits also indicated that similar type structures as the one in question in this case have been constructed in this conservancy environment without the proper permits.

XIII

Appellants contend that King County does not have the authority to impose conditions relative to the bulk and the design of a joint use pier.

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XIV

Respondent, King County contends that it has full authority to evaluate individual proposals and to impose such conditions as are necessary to implement the policies of the King County Shorelines Master Program and the State Shorelines Management Act

XV

The proposed 964 square feet for appellant's pier is below the 1200 square feet allowed by KCSMP but above the 480 square feet allowed by King County in the substantial development permit

XVI

Both appellant and respondent's design of the pier would extend approximately 80' into the water. Appellant's design is for a 4' wide pier while King County's substantial development permit would allow a joint-use moorage pier, not to exceed 6' in width.

XVII

The type of construction proposed, upon pier, is favored by the KCSMP. The length and height of the proposed pier are within the KCSMP standards. The county issued a declaration of non-significance. No adverse environmental impact of any consequence was identified pursuant to the State Environmental Policy Act (SEPA).

XVIII

King County set a design qualification on this joint use dock permit, which in essence precluded using the existing structure, for a number of reasons. One of these reasons was the fact that the structure had been constructed without the proper permits. In

addition, the review criteria evaluation of this substantial development permit states "many waterfront owners would find extension of their lots over the water highly desirable. The ultimate "decking" of all King County's shoreline is contrary to adopted regulations."

XIX

The previous application for a variance is not before this Board. Whatever the structure was called in the previous application is not a factor in this application. Therefore I believe the Board should conclude that the existing structure in question is part and parcel of a pier. Therefore it is a permitted use in the conservancy environment.

XX

I believe the Board should find that the staff's "intention", not to deck all the shorelines of King County" and as expressed in the design constraints, is insufficient to constitute an impediment to appellant's application and the granting of a substantial development permit. The condition which would have required the removal of the existing structure is unreasonable and should be stricken. The application filed with King County is complete in all respects and meets the requirements of local ordinances and state law.

XXI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

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CONCLUSIONS OF LAW

I

Appellant's contention that King County cannot establish reasonable conditions on a shoreline substantial development permit are without merit.

II

I believe this Board, as it has in the past (SHB 82-54) should have found that the after the fact nature of an application is not a proper basis to bar its issuance.

III

The county should require that the two subject property owners file an agreement to share joint use of the proposed dock.

IV

The thought that decks are not desirable as expressed in the "review criteria evaluation" section of the substantial development permit is insufficient in and of itself to prevent appellants from receiving a permit that allows them to keep the existing structure, as part of a permitted use namely the pier.

V

Respondents argue (page 9 - closing argument) that King County does not exempt docks under the sum of \$2,500 from compliance with the overall requirements of the program (KCSMP). In this respect it differs from the SMA.

The SMA specifically allows single family docks under the sum of \$2,500 to be built without a permit in the shorelines. The county

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shoreline ordinance, by contrast, allows docks under certain circumstances. The two laws conflict because they reflect opposing policies.

The KCSMP thwarts the state's policy, because it grants the county power to deny permits for proposed docks in the shoreline. The ordinance, in effect allows the county to prohibit precisely what the state unconditionally allows and in so doing

violates the state constitution. (See Diamond Parking Inc. v Seattle, supra, 78 Wn 2d at 780-82, 479 P 2d 47 and Ritchie v Markley, 23 Wn App 569 (1979))

VI

The decisions of King County should be reversed and the matter should be remanded to the county for permit issuance without the provisions "not exceed 6'x80' and 480 square feet in surface area "

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

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ORDER

The decision of King County in regard to the substantial development permit of the appellants should be reversed and the matter remanded to the county for permit issuance without the provisions "not exceed 6'x80' and 480 square feet in surface area "

DONE at Lacey, Washington, this 18th day of November, 1983

SHORELINES HEARINGS BOARD

LAWRENCE J FAULK, Member

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Addendum to the Majority Opinion - Gayle Rothrock

The dissent's interpretation of the majority opinion, past cases, and the Shoreline Management Act are inapposite. An over-the-water residential deck is simply not an allowed use under the KCSMP.

GAYLE ROTHROCK, Presiding Officer

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